

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE TO AMEND CHAPTER 99 OF THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE VIII RELATING TO APPEALS.

WHEREAS, it is determined that in order to best serve the health, safety and welfare of the citizens of Sussex County, it is necessary to revise the Code of Sussex County in respect to appeals filed under the Subdivision Ordinance;

NOW, THEREFORE THE COUNTY OF SUSSEX HEREBY ORDAINS:

**§ 99-39 Appeals.**

- A. [Any applicant aggrieved by a finding, decision or recommendation of the Commission and/or its staff may request and shall receive opportunity to appear before the Commission to present additional relevant information and request reconsideration of the original finding, decision or recommendation, or said applicant may appeal said finding, decision or recommendation to the County Council within 60 days.]

A. Any approval or disapproval of a preliminary or final plat by the Commission may be appealed within 20 days of the official action approving or disapproving said plat. In the event of such an appeal, the following procedures shall apply.

1. As provided in 10 Delaware Code, §6811, an appeal may be filed by a party aggrieved by either the approval or the disapproval of a preliminary or a final plat.

2. The party filing the appeal must file a written notice of appeal with the Director of Planning & Zoning within 20 days of the date of the decision being appealed from and pay the appeal fee hereafter provided for. The notice of appeal shall set forth all of the reasons or grounds for the appeal and shall be signed by the party or parties filing the appeal.

3. When an appeal has been filed in a timely manner, the Commission shall hold a public hearing pursuant to the hearing requirements of 9 Delaware Code, §6812(a) and within 30 days following the date of the hearing, the Commission shall issue its findings and conclusions and shall provide a copy thereof to the applicant.

4. The Commission shall create a tape recording of the appeal hearing.

- B. [If, after requesting the Commission to reconsider the denial of any preliminary or final plat, the applicant still feels that such action is unreasonable and causes him unjustifiable hardship, he may appear before the County Council to request a reconsideration of the denial of said plat.]

B. If the appellant is aggrieved by the decision of the Commission, he may appeal that decision to the County Council within 20 days. In such event, the appeal shall be an appeal on the record of the hearing before the Commission and the notice of appeal shall specify the grounds therefore and the appellant shall pay the appeal fee hereafter provided. In respect to an appeal to Council from a decision of the Commission the following procedures shall apply:

1. Within 45 days following the filing of the appeal to Council, it shall be the responsibility of the appellant to pay the costs to have a certified court reporter prepare a verbatim transcript of the hearing record before the Commission at the appellant's expense and to file said transcript with the Clerk of County Council. If the transcript is not filed within said 45 day period, the appeal shall be dismissed.

2. Council shall review the record of the hearing before the Commission and shall make a determination as to whether the Commission's decision was the result of an orderly and logical review of the evidence and involved the proper interpretation and application of the Ordinance. If Council finds that the Commission misapplied or misinterpreted the applicable sections of this Chapter or that its findings were not the result of an orderly and logical review of the evidence and the applicable provisions of this Chapter, Council may:

(a) Council may send the matter back to the Commission for further review and consideration and, if Council considers it necessary, it may direct that the Commission hold a new hearing, specify the time period within such hearing shall be held and direct the Commission to issue a written decision containing findings and conclusions following the rehearing.

(b) Council may reverse a decision only upon a finding that the Commission made an error in its interpretation of the applicable sections of this Chapter; or the Commission's findings and conclusions were not the result of an orderly and logical review of the evidence and the applicable provisions of this Chapter.

(c) Council shall act on the record of the hearing before the Commission and shall not hold an additional public hearing.

C. [Further appeals shall be to the Superior Court in the same manner as appeals from decisions of the Board of Adjustment in 9 Del. C., § 6918.]

C. Any party aggrieved by the decision of Council may appeal to the appropriate Court, but only after all remedies made available under this chapter have been exhausted.

D. The standard of review to be applied by both the Commission and Council is that a decision approving or disapproving a plat shall be upheld unless the appellant

can demonstrate that the Commission made an error in its interpretation of the applicable sections of the subdivision ordinance and/or that the Commission's findings and conclusions were not the result of an orderly and logical review of the evidence and the applicable provisions of the subdivision ordinance.

E. Appeals to the Commission and Council shall not be based on new or revised subdivision plans that were not presented to the Commission prior to the plat being approved or denied or to appeal a condition imposed by the Commission.

F. The fee for filing an appeal to the Commission shall be \$500.00 and shall be payable to the Commission on the date of filing the notice of appeal.

G. The fee for filing an appeal to Council shall be \$500.00 and shall be payable to the Clerk of Council on the date of filing the notice of appeal.

H. This amended appeal procedure shall apply to any appeal filed after the date of adoption of this Amendment.

*Synopsis: This amendment revises the appeals provisions of the Subdivision Ordinance. It eliminates the ability to have a public hearing on a subdivision appeal before both the Commission and Council. It also includes the standard of review to be applied on appeal, requires the appealing party to pay for the preparation of a hearing transcript and pay an appeal fee for each level of review. It also allows an appeal to be filed from either the approval or disapproval of a plat as required by 9 Del. C., § 6811, whereas the present wording only allows an appeal to be filed by an applicant (developer) from the denial of a plat.*